

BOARD OF APPEALS MINUTES

JANUARY 14, 2003

On Tuesday January 14, 2003, at 7 p.m. the Clarence Board of Appeals heard the following requests for variances:

APPEAL NO I Dennis James Commercial	Requests the Board of Appeals approve and grant a fifteen foot (15') variance creating a thirty foot (30') front yard setback for the construction of a covered front porch for seasonal dining at a new restaurant / ice cream parlor at 5840 Goodrich Road
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APPEAL NO I is in variance to Article VIII, section 30-46 A, size of yards.

APPEAL NO II Swormville Fire Co. Major Arterial	Requests the Board of Appeals approve and grant a five foot (5') variance creating a five foot (5') side yard setback on the north side of the proposed new fire house at 6971 Transit Road.
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APPEAL NO II is in variance to Article VIII-A, section 30-49.4 C, size of yards.

APPEAL NO III Chris & Lauren Kausner Agricultural	Requests the Board of Appeals approve and grant a three hundred foot (300') variance creating a four hundred foot (400') front yard setback for construction of a new home at 9989 Brauer Road.
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APPEAL NO III is in variance to Article V, section 30-27 B, size of yards.

APPEAL NO IV Dominic Piestrak Residential B	Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a one hundred foot (100') front lot line setback for construction of a new home at 5621 Woodruff Drive. (Hidden Pond Subdivision Phase II)
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APPEAL NO IV is in variance to Article II, section 30-12 A, size of yards.

APPEAL NO V
Dominic Piestrak
Residential B

Requests the Board of Appeals approve and grant a variance to the Town of Clarence Grading Code to measure grade from the garage floor instead of the top of the foundation wall in Hidden Pond Subdivision Phase II. (Extension of Woodruff off Lantana)

APPEAL NO V is in variance to Sec 30-57 C, Grade. See ordinance enclosed.

APPEAL NO VI
Jerry & Marsha Ritch
Major Arterial

Requests the Board of Appeals approve and grant a five foot variance (5') creating a five foot (5') side yard setback on both sides of the property for construction of two town home units at 6407 Transit Road. (A Special Exception use permit to construct a two family dwelling creating a three-family lot at 6407 Transit Road was granted by the Town Board on August 14, 2002.)

APPEAL NO VI is in variance to Article VIII-A section 30-49.4 C, size of yards.

APPEAL NO VII
Jay Birnbaum & Nathan Lewinger
Major Arterial

Requests declaratory relief, revocation of building permits and certificates of occupancy, and enforcement of zoning ordinances at 4715 Transit Road. (Carmines Restaurant)

APPEAL NO VII is a request for an interpretation of a Zoning law determination of the Zoning Enforcement Officer.

ATTENDING: John Brady
Ronald Newton
Raymond Skaine
Arthur Henning
John Gatti

INTERESTED
PERSONS: Dennis James
Christina O'Brien
Douglas Klotzbach
Garry Daigler
Dominic Piestrak
Stephen Castilone
Peter Tiutiumuyr
Jerry Ritch
Scott Becker
Sean Hopkins

APPEAL NO I
Dennis James
Commercial

Requests the Board of Appeals approve and grant a fifteen foot (15') variance creating a thirty foot (30') front yard setback for the construction of a covered front porch for seasonal dining at a new restaurant/ice cream parlor at 5840 Goodrich Road.

DISCUSSION:

They would like the porch to maintain the look and character of the neighborhood, and preserve its charm. The existing house will be renovated for the restaurant/ice cream parlor. There will be 29 parking spaces and also walk up business. Everyone agreed this was a better location, and will have more walk up business.

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to approve Appeal No I as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO II
Swormville Fire Co.
Major Arterial

Requests the Board of Appeals approve and grant a five foot (5') variance creating a five foot (5') side yard setback on the north side of the proposed new firehouse at 6971 Transit Road.

DISCUSSION:

Doug Klotzback is the Architect for the project. He was accompanied by Garry Daigler of the Swormville Fire Co. They submitted a deed description with the 30 foot easement on the adjoining property. When they purchased the back property they got that easement just for the situation they have in place right now. They are requesting a variance on the north side of the property for the purpose of building close to the property line so they could have that driveway easement. They need to move it over five feet away from that property so they could get some windows in on that north side. They will use the existing building until the new building is completed, then it will be demolished. They are expanding to accommodate changing demands. and equipment needs. They went paramedic about a month ago, and they will put a second rig on.

ACTION:

Motion by John Gatti, seconded by Arthur Henning to approve Appeal No II as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO III
Chris & Lauren Kausner
Agricultural

Requests the Board of Appeals approve and grant a three hundred foot (300') variance creating a four hundred foot (400') front yard setback for construction of a new home at 9989 Brauer Road.

This was removed from the agenda at the Engineering Departments request.

APPEAL NO IV
Dominic Piestrak
Residential B

Requests the Board of Appeals approve and grant a fifty five foot (55') variance creating a one hundred foot (100') front lot line setback for construction of a new home at 5621 Woodruff Drive. (Hidden Pond Subdivision Phase II)

DISCUSSION:

This is a five acre lot, but it is pie shaped with a frontage of 54.94 feet, and a depth of 577 feet. The next door neighbors are going to set their house at a 55 foot setback. Ray Skaine said he lives in a similar culdesac, and his frontage is fifty five feet . If he went back another 50 feet, he would be in his neighbors backyard invading his privacy. This is the same thing, and he is concerned. There is brush on the south side of Mr. Castilone's property, but too immature to provide any privacy, and on the north side there isn't any brush at all. Ron Newton agreed, there is hardly a woods, you are going to see your house and the neighbors house. Mr. Castilone said he is trying to make the water and the setting correct, not incorrect. He needs to start building his home, he has been waiting for this lot to build his home. Arthur Henning asked Mr. Castilone if he owned the property. Dominic Piestrak said he owns the property. John Gatti said he would like to see the houses staked and have a site meeting to see exactly what it will look like staked. It was agreed that the board would meet on Tuesday January 21, 2003 at 8:00 a.m.

ACTION:

Motion by Raymond Skaine, seconded by John Gatti to table this item, and meet on January 21, 2003 at 8:00 a.m. for a site meeting.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO V
Dominic Piestrak
Residential B

Requests the Board of Appeals approve and grant a variance to the Town of Clarence Grading Code to measure grade from the garage floor instead of the top of the foundation wall in Hidden Pond Subdivision Phase II. (Extension of Woodruff off Lantana)

DISCUSSION:

There was a discussion about the pros and cons of top of wall foundation maximum grades and garage floor grades. Dominic Piestrak said they have a drainage problem with walkouts and daylight. They look at top of wall to solve the problem, and it doesn't solve the problem. Dominic would like to see the grade set by the garage floor, which can be determined the day you dig and pour the basement. Done. You don't have to put four plates on to raise it up. Why do all that, just set the grade by garage floor, and it works. Ron Newton said "He's not saying he doesn't like your idea, he is saying to us that there has to be 48" from the centerline of the road to the top of the garage floor, or the top of the wall, to give you the slope that he is looking for. You have to have a parameter or you could put that at any level you want." Dominic said "If you said that the garage floor could be two foot above the curb. If you want to put five steps into your house, put five steps in. I know one thing - the grade is all the same. If you think about it, you can see why, because a car can't go up and down the stairs. Ray Skaine asked "Why can't you do both? Top of wall, and top of garage floor." Dominic said "Then you are really setting it on the garage floor. Dominic said when he originally proposed this, he proposed a grade - a percentage. You say any driveway cannot be more than 7% above the crown of the road. The garage floor has to be set at seven. I can do that as the developer, say I am going to put everything at 7 percent. I know the pitch of the driveway is going to be seven percent and that is it. When you go to the building department they are going to tell you "You are back fifty foot, so you can go three point five foot above, and that is where you have to go. You can't do anything else. Ron Newton said "To the top of the wall?" Dominic said "To the garage floor. Now, the thing is if you said everything is done with a percentage, so as you slide the house back and forth, you are exactly even with the neighbors. So when you come down the front, all the driveways are perfect. Ray Skaine asked "Jim, if we go with Joe's (Latona) recommendation - if we go with that

and we say we will approve in advance any variance that the Town Engineer and Dominic agrees on, and that is only 1-16. That way Joe controls the variance. Jim said I think that is the proper way to do it. He has given you a max, he has given you specific numbers. Dominic if you want to take it to the Town Board you can. After much discussion it was decided that the board would deny the request.

ACTION:

Motion by Raymond Skaine, seconded by John Gatti to deny Appeal No V.

ALL VOTING AYE. MOTION CARRIED.

Motion by Raymond Skaine, seconded by Ron Newton to amend Appeal No V to incorporate the memo of Town Engineer Joseph Latona specifically addressing sub lots 1-through16 giving Mr. Latona the authorization to grant the necessary variance on these lots. This memo will be attached as a guideline. The board grants a variance conditioned upon approval of the Town Engineer based upon these guidelines.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VI
Jerry & Marsha Ritch
Major Arterial

Requests the Board of Appeals approve and grant a five foot (5') variance creating a five foot (5') side yard setback on both sides of the property for construction of two town homes units at 6407 Transit Road. (A Special Exception Use permit to construct a two family dwelling creating a three family lot at 6407 Transit Road was granted by the Town Board on August 14, 2002)

DISCUSSION:

After looking at the demographics of the lot, and the shape of the houses they decided on, there is going to be overlap. They are trying to minimize the overlap. If they could go to five feet on each side, the ten feet would mean working with ninety feet rather than eighty feet. The houses are actually wider than the rough drawing. They staked it out and it would look better if they could have five foot side yards. They have lost seven or eight trees from the wind, and they will take some down because if they don't nature will. They would like to prevent the damage the trees could cause, many of them are already dead. Ray Skaine asked

about the driveway, he didn't see any definitive driveway. There is an existing two way driveway, that will veer off for the units. Ron Newton suggested moving one unit forward, and one unit backward so they could maintain the side yard setbacks. Mrs Ritch said the houses are not going to look exactly alike. The house in the back is going to be 56 feet by 56 feet. The front house is going to be 92 feet by 44 feet. With those figures in mind the houses will overlap about ten feet each. One house will look back on the other house. It's a matter of aesthetics. Holiday Retirement Homes is five feet away from the property line, but that is zoned PURD. One home is going to be theirs, and the other home is for his father in law and mother in law. The antique shop is in front, as well as a single family home. They will all remain. The antique shop is their own business. They usually have one or two customers at a time.

ACTION:

Motion by John Gatti, seconded by Raymond Skaine to approve Appeal No VI as written.

ALL VOTING AYE. MOTION CARRIED.

APPEAL NO VII

Jay Birnbaum & Nathan Lewinger
Major Arterial

Requests declaratory relief, revocation of building permits and certificates of occupancy, and enforcement of zoning ordinances at 4715 Transit Road. (Carmine's Restaurant)

DISCUSSION:

Scott Becker of Kavinoky & Cook is the attorney representing Mr. Birnbaum. Sean Hopkins of Renaldo & Meyer represented Carmine's Restaurant. Both attorneys gave a brief statement. Mr. Becker stated that Carmine's has insufficient parking, they only have 21 parking spaces for 135 seats and 12 bar stools. That would require 49 parking spaces. The absence of sufficient parking at Carmine's has caused patrons to infringe on Mr. Birnbaums parking lot. When patrons of the restaurant were informed by the tenants, they either ignored them or were hostile to them. Mr. Birnbaum applied for a building permit to construct a continuous barrier fence in between the two parking lots, so patrons wouldn't be able to drive from one parcel to the other, and park on one parcel from the other parcel. The landscaping committee informed Mr. Birnbaum during that process, there would be no

circumstances under which a continuous barrier type fence

permit would be issued. Access would have to be required between the two parcels. They are seeking the remedy of having the seat numbers brought down to match the parking capacity. John Gatti said A What you are telling us is that a business that has been there for forty years should cut down their restaurant capacity? Has your client ever thought of purchasing a sign that says this space is reserved for such and such and people parking who are violators will be towed away?@ His client has considered that option, but to his knowledge has never tried it. Ray Skaine said they have those signs in that plaza, for the Millionhair Salon, on the east side near the BAC. Ray said he would like a ruling from the Town Attorney to give this board some guidance, we are not lawyers. Sean Hopkins of Renaldo & Meyer said he represents Carmine's Restaurant. He has a letter he would like to submit to the board documenting his position. AMy client last obtained a variance from the Zoning Board of Appeals in 1985 to allow the expansion, one of the expansions that Mr. Becker referenced. There is a statute of limitations to challenge a decision by this Board. Town law states that it is thirty days. The statute expired more than seventeen years ago. Mr. Becker submitted a letter to the board stating that we have not made any attempt to try and resolve this issue. I disagree with that. You will see attached to my letter, is a letter from me indicating that my client is willing to contribute \$5000.00 to assist in preparing a parking plan, as well as \$700.00 per month to lease 20 parking spaces on a non exclusive basis. Keep in mind non exclusively - only when we need them - we are not going to have permanent occupancy of those spaces. We thought that was a very reasonable request. To date we have not been able to proceed any further past that point, and that was in November of 2001. So to suggest that we have not attempted to resolve this issue is simply not true. Second of all my client has continually shown good faith with respect to issues that have arisen over time between the property owners. In fact in 1994 my client Mr. Jacobbi granted an easement to Mr. Birnbaum which provides him with access for service vehicles, access for emergency vehicles, and also access for ten or twelve parking spaces that otherwise would not be able to be utilized. In exchange for that easement, he received the grand sum of ten dollars. So now we have a good faith

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effort by my client, going here, and probably the next step is going to be court. For my client, the stakes are high

although Mr. Becker suggests it is really a disagreement between his client and the Town. My client is the one whose business is at risk at this point in time. I do agree with Mr. Skaines position that this should get referred to the Town Attorney's office for an interpretation first. But in the end the Zoning Code says that it is Mr. Callahan who makes this determination, and I would ask that ultimately this board would uphold this decision. Ron Newton asked Mr. Becker if he was representing the BAC or the little strip plaza.? Ron said I don't see where you are getting all the people from, I don't see ten cars in front of those stores at any time. Now, I know the BAC takes up most of the parking. I went there, and I have had to park there facing Transit. I don't know if I was parking in Pier One's space or Carmine's space. To say that Carmine's is causing your client a problem is a bigger stretch, than I would even care to consider at this meeting. Unless you could literally go out there and say AAre you going to Carmine's or are you going to the BAC? If you were going to come back to this board and say okay we have canvassed this, and 90% of the people were going into Carmine's. But I would have to say 90% of those people in those parking spaces are going to the BAC, and you are shooting darts at the wrong guy.@ Mr. Becker said AThe parking lot, exclusive of the part that belongs to the restaurant, the rest of the parking lot is a shared parking lot, pursuant to an agreement between the BAC and my client. So there is a shared maintenance and a shared configuration between the two of them. In terms of what you are saying about the clientele using that lot, while patronizing the restaurant - I can only tell you what my client has told me, there are specific incidents, it happens, and it has happened on more than one occasion, and that it continues to happen. In terms of some sort of study, that is something we can absolutely consider, if that will make a difference to the Board. Ron Newton said AHow are people to know what parking spaces belong to what businesses? They are not designated, there are no signs, and it is open parking.@ Mr. Becker said I recall a conversation about the signage issue, and I recall an inquiry from my client as to how - whether there would be restrictions on how to sign that particular area. There are signage restrictions in the Code, and that is another hurdle

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that he didn't know how to cross essentially with the sign restrictions.@ Ron Newton said ABut, it is very hard to say

to us, or to say to potential people out there - don't park here, unless you are going to have some one out there constantly saying don't park here.@ Mr. Becker said AThe easiest way to do it is with a barrier fence.@ Ron Newton said AThe barrier fence has already been disallowed. We have enough junk in the Town, we don't need a barrier fence. Forget it.@ Arthur said AI will just refer to the Town Attorney.@

ACTION:

Motion by Raymond Skaine, seconded by Arthur Henning to table this and look for guidance from our Town Attorney Robert Friedman for his comments and suggestions to this board.

John Gatti	AYE
Ray Skaine	AYE
Ronald Newton	AYE but I don't believe the applicant has presented enough information even for the Town Attorney to make a determination. Allegations are all I hear, there are no demarcation lines.
Arthur Henning	AYE
John Brady	AYE

ALL VOTING AYE. MOTION CARRIED.

Meeting adjourned at 9:00 p.m.
John Brady, Chairman